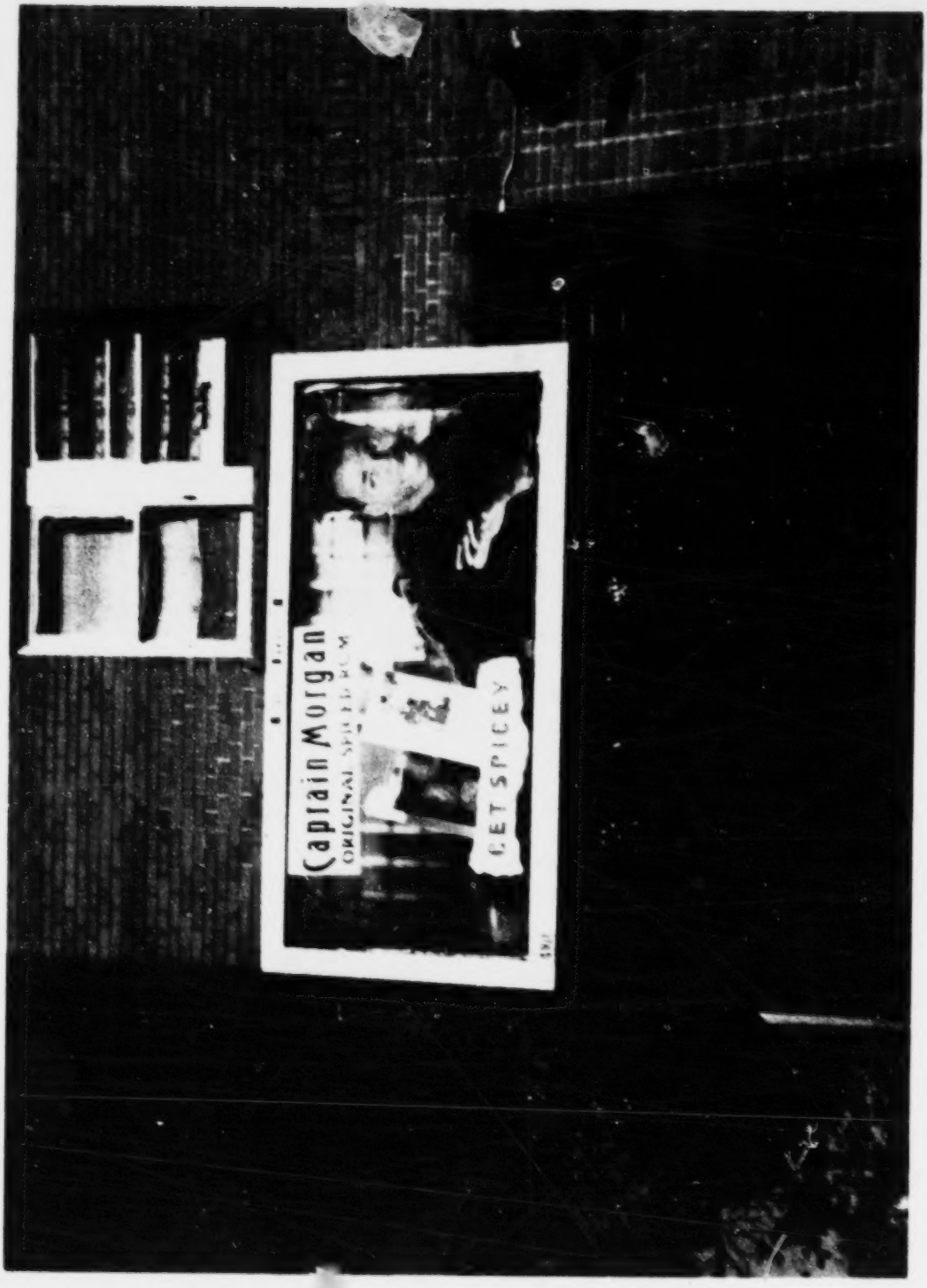
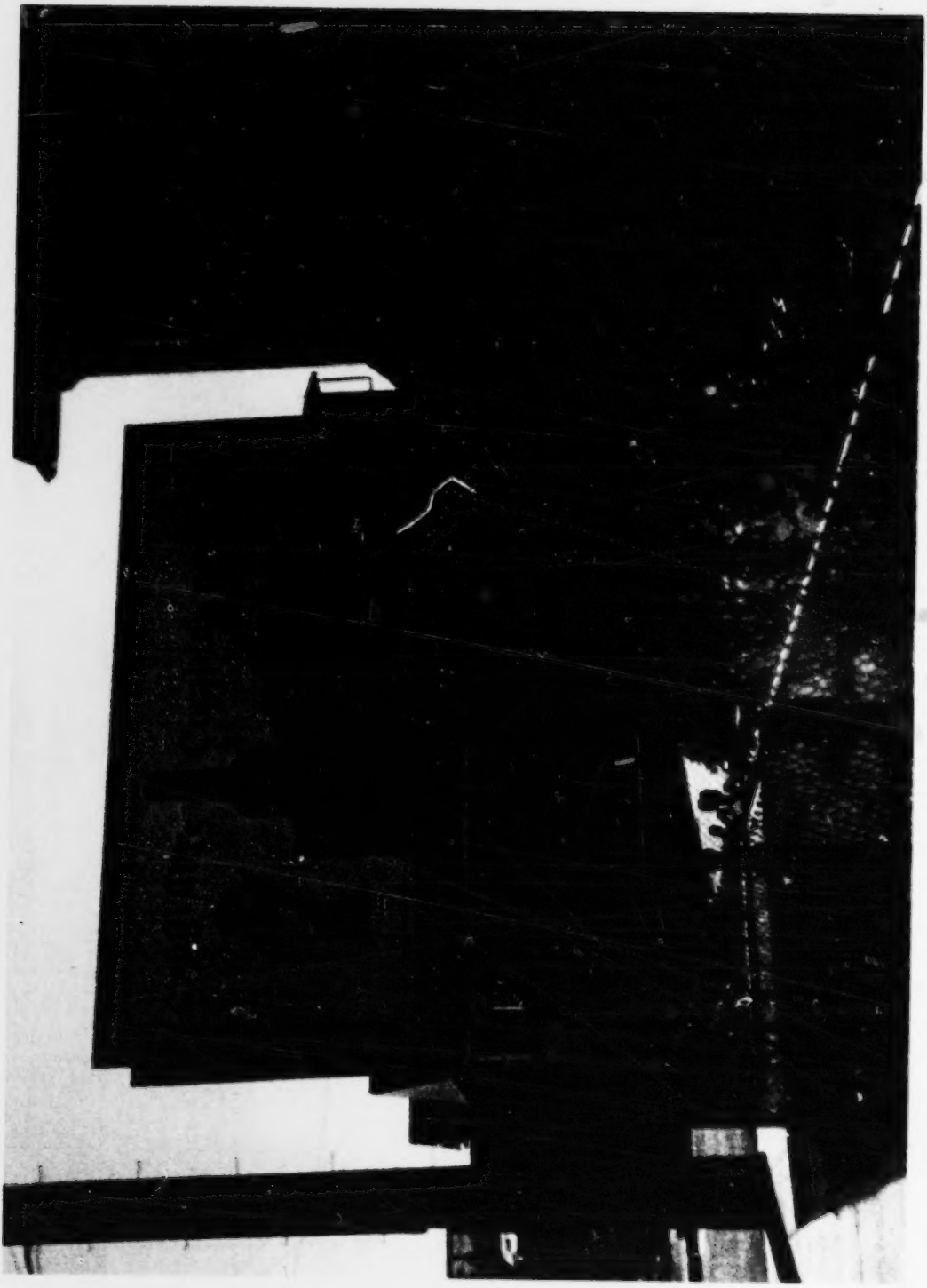
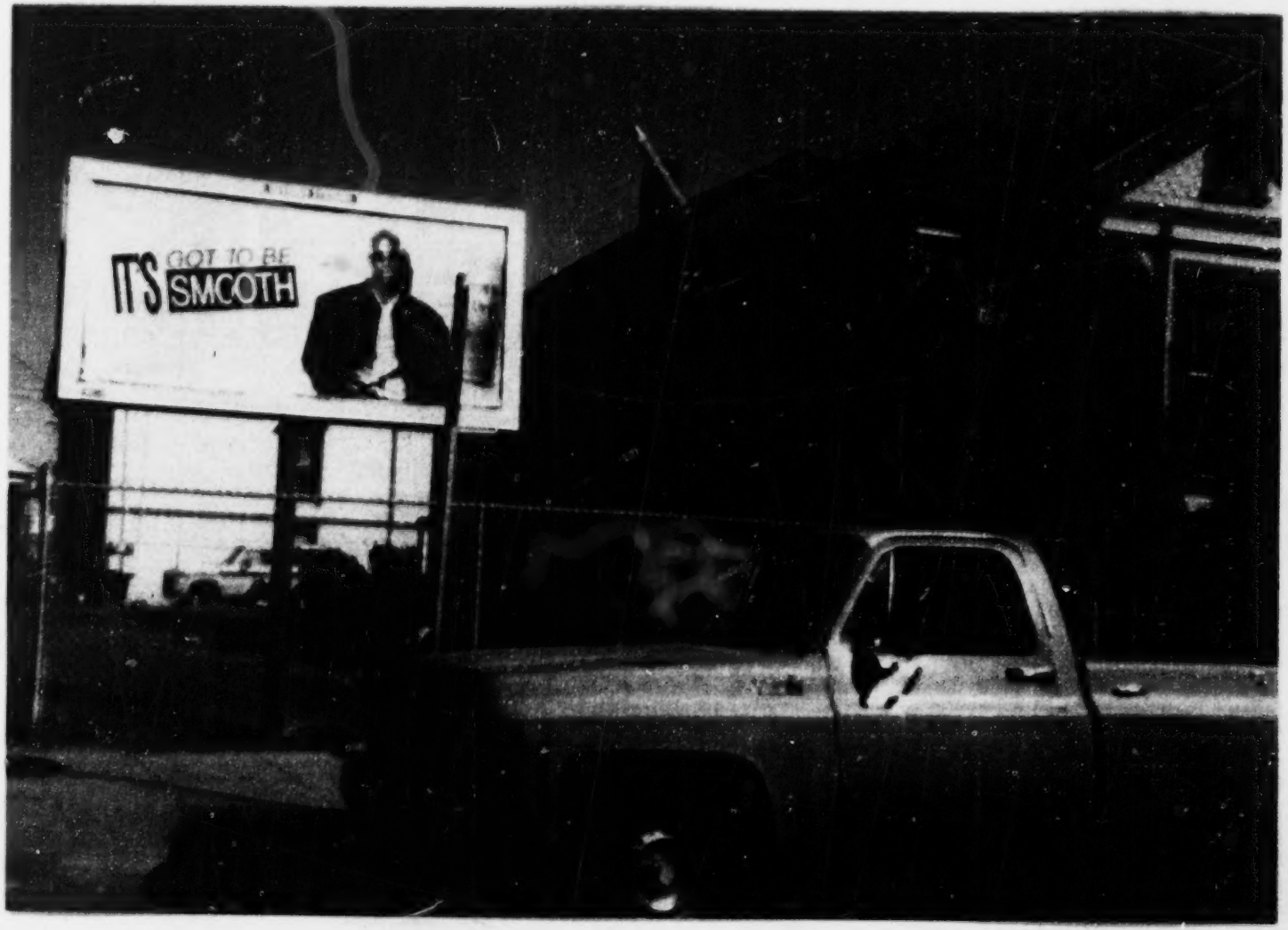
APPENDIX A






IT'S GOT TO BE
SMOOTH

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

No. C 98-02237 WHA

ELLER MEDIA COMPANY and INFINITY OUTDOOR,
Plaintiffs,

v.

CITY OF OAKLAND,
Defendant.

ORDER GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT; DENYING PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT; AND DENYING PLAINTIFFS' MOTION FOR PERMANENT INJUNCTION

INTRODUCTION

Plaintiffs Eller Media Company and Infinity Outdoor, vendors of billboard space, bring a First Amendment challenge to an Oakland city ordinance that prohibits alcoholic-beverage advertising on billboards in areas where minors tend to live, play, and go to school. This order holds that, under the test for commercial speech set forth in *Central Hudson Gas & Electric Corp.*, 447 U.S. 41 (1980), Oakland's ordinance is constitutional.

STATEMENT

In December 1997, the Oakland City Council adopted Ordinance No. 12025 C.M.S., amended in October 1998 by Ordinance No. 12085, which restricts the use of billboards to

promote alcohol, with enumerated exceptions.[1] Oakland adopted the ordinance to stem minors' purchase and consumption of alcohol. Before the ordinance took effect, billboards advertising alcohol were common in neighborhoods where minors lived, played, and attended school—particularly in low-income and minority neighborhoods. Examples of these billboards included depictions stylish young adults holding glasses of liquor and young women in bathing suits reclining next to bottles of Seagram's. One recurrent example showed a grinning young man with Captain Morgan Original Spiced Rum and the tag line "Get Spicy!"

The ordinance does not ban all outdoor signs; instead, it restricts the time, place, and manner of alcoholic-beverage advertising. It targets outdoor signs where children live, play, and go to school. Exceptions to the general prohibition include signs located within areas designated as "Business Mix," "General Industrial/Transportation," "Mixed Use Waterfront/Estuary Plan Area," or "Regional Commercial." Within these excepted areas, however, no sign advertising alcohol may face into adjoining areas with different land-use designations, and no sign advertising alcohol may be within 1000 feet of schools, city-owned youth-recreation centers, licensed child-care facilities, places of worship, or Raimondi Field. Also excepted from the general prohibition are signs inside premises that sell alcohol; signs on commercial vehicles used to transport alcohol; on taxicabs; signs used in conjunction with one-day or temporary alcoholic-beverage sales licenses; signs that serve to identify businesses that sell alcohol by depicting their name or slogan; signs that do not refer to a specific brand of alcoholic beverage; and signs next to and facing an interstate highway. Finally, the ordinance does not prohibit signs opposing the use of alcoholic beverages or tobacco products.

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[1] The ordinance also targets outdoor signs that promote tobacco. Plaintiffs do not challenge that aspect of the ordinance, however.

Plaintiffs Eller Media Company and Infinity Outdoor lease billboards in Oakland (and other locations throughout the United States) for advertising, including advertising for manufacturers, distributors, and retailers of alcoholic beverages. When the ordinance went into effect on June 7, 1998, Eller Media's billboards available for alcohol advertisers in Oakland dropped from 788 to 54, and Infinity's dropped from 612 to 29. Before the ordinance, Eller leased about 14% of its billboards to alcohol advertisers; after the ordinance, that dropped to about 7%. For Infinity, the figures were 9% to 4.5%.

In October 1997, before the ordinance was enacted, the Oakland city manager reported to the Oakland Council Public Safety Committee that outdoor commercial advertising was a form of speech entitled to First Amendment protection, and that the ordinance had to satisfy the four-part test for commercial speech adopted by the Supreme Court in *Central Hudson Gas & Electric Corp. v. Public Service Commission,* 447 U.S. 557 (1980). The council enacted the ordinance after holding public hearings and considering submitted material, which is appended as Exhibit F to the declaration of Mark Wald in support of Oakland's motion.

Soon before the ordinance took effect, plaintiffs sued to enjoin its enforcement on the ground that it violated the First Amendment. The case was originally assigned to the Honorable Fern M. Smith, who preliminarily enjoined Oakland from enforcing the ordinance against noncommercial speech that related to alcoholic beverages, but allowed it to prohibit covered speech that contained both commercial and non-commercial messages. In response to the ruling, Oakland adopted Ordinance No. 12085, amending the original ordinance to make clear that it does not restrict noncommercial speech.

Next, plaintiffs moved for partial summary judgment and a permanent injunction, and Oakland moved for summary judgment. Judge Smith denied these motions. In denying Oakland's motion, Judge Smith held that the record had not

been sufficiently developed for the Court to determine whether the ordinance was narrowly tailored to further its ends, as *Central Hudson* requires:

> The City has failed to explain why the less speech-invasive means proposed by plaintiffs are not equally effective at mitigating the asserted harms. The single inroad the City has made in this regard is to cite the approximately three hundred minor decoy operations conducted between 1995 and 1997. *See* Blanchard Report at 5. All the same, the evidence thus far submitted does not show whether this effort was unsuccessful or was somehow inadequate as an alternative to the Ordinance. Because the record contains very little in the way of legislative findings on this topic, and because plaintiffs raise a legitimate concern that the Court is required to consider under prong four [of the *Central Hudson* test], summary judgment at this point is premature.

In light of her ruling on prong four, Judge Smith declined to decide whether Oakland had proved that the exceptions to the ordinance would not prevent if from materially reducing underage consumption and purchase of alcohol, as required by prong three of *Central Hudson*. Judge Smith did, however, determine "that advertising and increased consumption are related; thus, billboard advertising and youth consumption are, too" (Order at 17-18). The order also noted that the speech restriction in this case was not as facially irrational as those in some of the cases cited by plaintiffs.

This case was then reassigned to the undersigned. The parties have now filed cross-motions for summary judgment. They agreed at oral argument that the Court should decide this case on the papers, and can make findings of fact as necessary, including any credibility and weight determinations.

ANALYSIS

1. Level of Scrutiny

Plaintiffs argue that the ordinance is subject to strict scrutiny rather than the lesser scrutiny employed by Judge Smith under *Central Hudson*. Two lines of cases, plaintiffs argue, mandate a more heightened review. The first is what plaintiffs call the *Butler* line, which emphasize that the Government may not "reduce the adult population . . . to reading only what is fit for children." *Butler v. Michigan*, 352 U.S. 380, 383 (1957). The second line of cases, according to plaintiffs, suggests that courts should apply strict scrutiny to commercial speech restrictions when the government targets the speech based on its content. *See, e.g., R.A.V. v. City of St. Paul*, 505 U.S. 377 (1992).

The Supreme Court has been wary, it is true, of the government restricting speech that is appropriate for adults merely because it is not appropriate for children. In *Butler*, the Court reversed the conviction of a Michigan man who sold "a book or descriptions, tending to incite minors to violent or depraved or immoral acts, [and] manifestly tending to the corruption of the morals of youth." *Butler*, 352 U.S. at 381. Michigan argued that it had exercised its power to promote the general welfare by outlawing books suitable to adults in order to protect minors. The Court responded that to take such an approach was "to burn the house to roast the pig," and held that the law was "not reasonably restricted to the evil with which it is said to deal." *Id.* at 383. More recently, citing *Butler*, the Court applied strict scrutiny to invalidate a statute that required cable owners who provided channels "primarily dedicated to sexually-oriented programming" to "fully scramble or otherwise fully block" those channels or to omit their transmission to hours between 10:00 p.m. and 6:00 a.m. *United States v. Playboy Entm't Group, Inc.*, 120 S. Ct. 1878, 1882-83 (2000) (quoting 47 U.S.C. § 561(a)). The Court held that the government had failed to establish a pervasive, nationwide problem of child exposure to pornography, or to prove the

ineffectiveness of an alternative protection, such as notifying viewers of the potential for "bleed" from a scrambled and allowing them to request that it be blocked. *Id.* at 1890-91.

The *Butler* line does not control this case for the simple reason that *Butler* and its progeny did not address commercial speech. *Butler* itself dealt with a statute that banned all books and other material that might corrupt the morals of Michigan youth. The statute targeted not commercial speech, but corruptive speech. Likewise, the legislation in *Playboy Entertainment* did not target commercial speech, but sexually explicit television programming. This case is further distinct from *Butler* because the ordinance here does not create a blanket ban on speech about alcohol.

Even if *Butler* does not apply, plaintiffs argue, the Supreme Court has, in fact, erased the difference in scrutiny between commercial-speech and non-commercial-speech cases, at least as to content-based restrictions. For this proposition, plaintiffs cite *R.A.V. v. City of St. Paul, 505* U.S. 377 (1992). *R.A.V.* invalidated a St. Paul ordinance prohibiting fighting words that insulted or provoked violence based on "race, color, creed, religion or gender." *Id.* at 391 (quoting St. Paul Bias-Motivated Crime Ordinance, St. Paul Minn., Legis. Code § 292.02 (1990)). The Court held that, even though the State could proscribe fighting words as an indivisible category, the State could not proscribe a sub-category of fighting words based on their content unless the restriction was necessary to serve a compelling interest. *Id.* at 381. In its discussion, the Court used commercial speech to provide and example of impermissible content-based discrimination:

> And to take a final example . . . , a State may choose to regulate price advertising in one industry but not in others, because the risk of fraud (one of the characteristics of commercial speech that justifies depriving it of full First Amendment protection . . . is in its view greater there).

> But a State may not prohibit only that commercial advertising that depicts men in a demeaning fashion.

Id. at 388-89 (citations omitted). The case did not involve commercial speech, and this example was thus merely a dictum. Nonetheless, plaintiffs suggest that it tolled a death knell for lesser First Amendment scrutiny of content-based restrictions of commercial speech, and argue that this Court should apply a higher level of scrutiny here.

Plaintiffs' forecast of the implications of *R.A.V.*, however, is premature at best. Since *R.A.V.*, the Supreme Court has continued to apply the more lenient *Central Hudson* test to restrictions on commercial speech, even in cases of alleged viewpoint discrimination. *See, e.g., Greater New Orleans Broad. Ass'n v. United States*, 527 U.S. 173, 184 (1999) (applying *Central Hudson* test to regulations restricting advertising for casino gambling but excepting gambling sponsored by Native Americans). Even before the Supreme Court's *Greater New Orleans* decision, the Ninth Circuit, addressing the issue in dicta, expressed doubt that *R.A.V.* should apply to commercial speech:

> Although *R.A.V.* requires that the content-based regulation of proscribable classes of speech be subject to strict review, it is unclear whether *R.A.V.'s* holding extends to commercial speech. Despite a suggestion in *R.A.V.* that strict scrutiny indeed does apply to the content-based regulation of commercial speech . . . , the Supreme Court has continued to apply *Central Hudson* in the commercial speech context in cases following *R.A.V.* Several courts have, however, either applied or considered the potential application of *R.A.V.* to regulations restricting commercial speech. Although the applicability of *R.A.V.* in the commercial speech context poses a question of interest, we need not resolve it. Even were we to conclude that *R.A.V.* applied, we are persuaded that [the statute at issue] would fall outside its scope.

Valley Broad. Co. v. United States, 107 F.3d 1328, 1331 (9th Cir. 1997). Though the Ninth Circuit has not squarely addressed the issue, the First Circuit has. In a case factually similar to this one, the First Circuit declined to apply the strict scrutiny of *R.A.V.*, noting that "the Supreme Court has made clear that even regulations which single out the promotional speech of a particular industry are analyzed under the *Central Hudson* test." *Consolidated Cigar Corp. v. Reilly*, 218 F.3d 30, 42 (1st Cir. 2000). For the reasons discussed herein and by the First Circuit, this Court, too, declines to apply the strict scrutiny suggested by plaintiffs. The analysis shall proceed under the test set forth in *Central Hudson*.

2. Application of the Central Hudson Test

Central Hudson set forth a four-part analysis for First Amendment challenges to restrictions on commercial speech. At the first step, the court asks whether the First Amendment protects the expression. To be protected, speech must concern lawful activity and not be misleading. At the second step, the court asks whether the asserted governmental interest is substantial. If the answer to the first two questions is yes, the court asks at the third step whether the regulation directly advances the governmental interest asserted. At fourth step, the court asks whether the regulation is no more extensive than necessary to serve that interest. *Central Hudson*, 447 U.S. at 566.

After Judge Smith's denial of Oakland's first motion for summary judgment, a limited part of the third prong and the whole fourth prong of *Central Hudson* remain in dispute.[2] At prong three, Judge Smith determined that advertising increases underage drinking. She left open, however, the opportunity for

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[2] The parties agree that the first two prongs of *Central Hudson* are met: the speech at issue is lawful and the government interest in stemming minors' consumption of alcoholic beverages is substantial.

plaintiffs to prove that the exceptions to the ordinance undermine its effectiveness. That possibility notwithstanding, as Judge Smith recognized, the main question in this case is at prong four: could Oakland have employed less burdensome alternatives to discourage minors' purchase and consumption of alcohol?

A. Prong Three—Material Advancement

Oakland bears the burden at the third prong of the *Central Hudson* test of showing that the ordinance directly advances the goal of stemming underage consumption of alcohol. This burden "is not satisfied by mere speculation or conjecture"; rather, Oakland "must demonstrate that the harms it recites are real and that its restriction will in fact alleviate them to a material degree." *Greater New Orleans*, 527 U.S. at 188. Judge Smith already determined that the harms listed by Oakland are real. She also already determined that alcohol advertising leads minors to drink. Judge Smith left open, however, the possibility that the ordinance's exceptions prevent it from materially advancing its goal.

To set the stage, the Court notes that the ordinance is not the only government regulation of alcohol and alcoholic-beverage advertising in effect in Oakland. First and foremost, California state law dictates that people under the age of 21 may not legally buy or consume alcohol. As discussed in the next section, Oakland enforces these laws. Since the 1970s, Oakland has also restricted the location of new alcohol outlets. Generally, no new liquor store may be within 1000 feet of any school, licensed day care center, church, public park, or playground. The size of signs in liquor stores are also regulated. With this background in mind, the Court turns to the exceptions to the ordinance.

Plaintiffs contend that myriad exceptions render the ordinance ineffective. Oakland allows the display of liquor ads—including neon signs—inside stores, and in store windows, regardless of location; Oakland allows delivery trucks to

advertise alcohol; it allows and profits from alcohol ads and sales at its Coliseum;[3] and Oakland allows alcoholic-beverage displays at the Oakland Airport. Plaintiffs also contend that Oakland allows alcohol advertising on City-owned land during special events. For example, an "Oktoberfest" was held at the Coliseum in connection with an A's baseball game; and family events sponsored by alcoholic beverage companies are held at Jack London Square.

The Court has reviewed the evidence regarding the exceptions and agrees with plaintiffs that minors are exposed to alcoholic-beverage advertising that the ordinance does not prohibit. Nevertheless, the Court finds that Oakland has a well-founded belief that the ordinance as written, exceptions and all, will serve its purpose.

Oakland points to expert and documentary evidence that billboards' unique characteristics make other media imperfect substitutes for reaching youth. These unique characteristics include the ability: to reach a broad range of citizens at a relatively low cost; to communicate with citizens in settings where other advertising media are unavailable or impractical; and to advertise with particular potency to children and adolescents in urban neighborhoods, where billboards are unavoidable and beyond parental control. Dr. Esther Thorson, one of Oakland's experts, opines that "alcohol advertisers who try to replace their Oakland billboards advertisements with TV, radio, newspapers, or other media will not be able to reach Oakland youth nearly as often or effectively for the same budget" (Thorson Decl ¶¶ 6-7; Wall Decl., Exh. 12 (Thorson Rep. ¶¶ 5, 9-10, 109-10, 130). "They will also lose the well-

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[3] Oakland allows beer advertisements B often illuminated B at concession stands, on ballpark fences facing the infield, on illuminated signs at eye level on the walls lining a walkway through which attendees must pass in the Stadium, and on a large electric scoreboard that is visible from a very limited part of the surrounding area.

documented synergistic effects," Dr. Thorson adds, "*of running* advertisements on billboards and [in] other media concurrently."

Oakland also lists admissions by plaintiffs on the efficacy of billboard advertising:

- Billboards are more cost-effective per advertising "impression" than any other major medium (Wall Decl., Exh. 21 (Infinity Dep. 33:10-18) and Exh. 22 (Eller Dep. 89-90, 156-57). As one plaintiff put it, "billboard advertising reaches the most people for the least cost of all general market advertising" (Wall Decl., Exh.44). Or, as Infinity conceded, advertisers "get more bang for their buck by going with billboards" (Wall Decl., Exh. 21 (Infinity Dep. 35:14-20).

- Outdoor advertising "is seen all day, every day," in Plaintiffs' words. "It cannot be turned off like television, tuned out like radio or discarded like newspapers and magazines" (Wall Decl., Exhs. 74 (24789 OS), 21 (Infinity Dep. 64 ("[W]e are proud to say, yes, that billboards cannot be turned off, cannot be avoided . . . . cannot be discarded like you can throw away a newspaper.")), 22 (Eller Dep. 56), 38, 71.

- Minors pay especially close attention to billboards (Wall Decl., Exhs 70, 49 (15584 Eller-15585 Eller). Studies show that children's awareness of billboards is, in the words of a billboard company analysis, "remarkable." "When compared to older viewers, the kids outscored adults in perception, remembrance and correct identification of outdoor advertised messages seen" (Wall Decl., Exh. 47 (memorandum to all Patrick Media Group, Inc. account executives).

- Plaintiffs' own written sales pitch claims when billboards are taken away, advertising in other media is less effective (Wall Decl., Exhs. 41, 61, 45, 67).

- Plaintiffs' own research shows that billboard advertising increases consumption even when other media are simultaneously used (Wall Decl., Exhs. 30, 51, 21 (Infinity Dep. 26:18-29:20).

Two of the most notable of these admissions are that children's awareness of billboards is "remarkable" and that advertising on billboards works even when other media are used.

Oakland also points out that, although youths and parents raised repeated concerns about alcohol ads on billboards where children live, play, and go to school, they did not raise concerns about youth exposure to other types of alcohol advertising. Minors' exposure to advertising at special events, in the airport, and on delivery trucks, Oakland argues, is much less frequent than their exposure to billboards in their neighborhoods and near their schools.

This Court need not resolve the parties' conflicting evidence and decide as a matter of fact whether the ordinance has or will materially cut the rate of underage drinking. Oakland has produced evidence that billboard advertising has qualities that other forms of advertising cannot replace. A difference of opinion or conflicting evidence on this issue is not sufficient to deprive Oakland of its ability to regulate alcohol advertising based on a well-founded conclusion that it leads to underage drinking. *See Consolidated Cigar*, 218 F.3d at 48 n. 10. Judge Smith has already found that billboard advertising does increase underage drinking. And Oakland has produced evidence that billboard advertising is effective even when other media are employed. It thus stands to reason that eliminating alcohol advertising on billboards in areas frequented by minors will materially advance Oakland's goal even if alcoholic beverages are still advertised in other media.

B. Prong Four-A Reasonable Fit

Under *Central Hudson's* fourth prong, the ordinance needs "a fit that is not necessarily perfect but reasonable" to achieve its

goals. *Board of Trs. of State Univ. of N. Y. v. Fox*, 492 U.S. 469, 477 (1989). Judge Smith identified the relevant questions: (1) does the ordinance leave open other channels of speech? and (2) are there "numerous and obvious less-burdensome alternatives" to the regulation? (Order at 22). After arguing on prong three that Oakland left open too many channels of speech, plaintiffs do not vigorously dispute that the answer to the first question is "yes." On the second question, however, plaintiffs suggest multiple alternatives to the ordinance.

Although plaintiffs do not contest that other channels of speech are left open for alcoholic-beverage-advertising, it is a point worth discussing. Oakland has not imposed a blanket ban on alcoholic-beverage advertising. The ordinance allows alcoholic-beverage advertising on outdoor signs in areas not likely to be frequented by minors; indeed, of their Oakland signs used for alcohol ads before the ordinance, plaintiffs still lease about 50% for that purpose now. The ordinance does not prohibit alcohol ads on television, in magazines, in newspapers, on the Internet, or on the radio. Advertisers of alcoholic beverages still have avenues for presenting their message to people in Oakland.

Moving to less burdensome alternatives, plaintiffs list several that would inhibit minors' ability to buy alcohol. For example, plaintiffs suggest increasing alcohol fees, increasing enforcement of laws against minors' consumption of alcohol, initiating "party patrols" based on community tips, initiating a program of breathalyser tests, and setting curfews.

Oakland has three responses. First, Oakland argues, it does sponsor programs to reduce minors' access to alcohol, including enforcement of underage-drinking laws. It has conducted hundreds of undercover sting operations, it has focused resources on youth cruising, it has increased its drunk driving enforcement, and it has heightened enforcement of truancy laws. Oakland also recently created a multi-agency Alcoholic Beverage Action Team, now staffed by three police officers, a

code compliance officer, a zoning officer, a deputy city attorney, a hearing officer, and two Police Department civilians. Among other enforcement efforts, the Team inspects alcohol outlets to prevent the conditions that foster illegal sales. And Oakland has done all this, it notes, despite having a violent crime problem and budget shortfalls.

Second, Oakland argues, at least some of plaintiffs' ideas are not workable. For example, though plaintiffs suggest that Oakland could raise the tax on alcohol in order to raise the price of alcohol, Oakland does not have the authority to increase a tax specifically on alcohol. Oakland can tax "retailers" uniformly, but the cost of any such tax to the consumer would be spread over a variety of goods. Moreover, such a tax would not target minors, but rather would mostly affect adult consumers.

Third, Oakland argues, the ordinance *complements,* rather than supplants, its programs to stem the supply of alcohol to minors. In other words, even if Oakland were to implement all of plaintiffs' suggestions, and they functioned as plaintiffs presume, the ordinance would still materially advance the goal of discouraging underage drinking. The ordinance is aimed at diminishing minors' desire to drink, while enforcement programs are aimed at minors' ability to do so. As noted the First Circuit noted in a similar case, restrictions on advertising reduce the psychological incentives to use the targeted product:

> [T]he restrictions on advertising should reduce the number of new or future users by reducing the visibility of tobacco products to minors, by dispelling the advertising-encouraged notion that tobacco products are pervasive and form part of the "good life," and by eliminating the psychological incentives to tobacco use presented by things such as simple as attractive ad color and design (aspects of advertising which we agree may reasonably be assumed to have greater effect on young people).

Minors' desire to drink remains relevant even if enforcement programs make it harder for them to buy alcohol. Oakland has submitted evidence that many minors procure alcohol from sources other than commercial outlets, such as from parents or older friends. Put differently, the alternatives listed above focus largely on the "supply" side of the equation whereas the ordinance focuses on the "demand" side.

In addition to suggesting ways to inhibit minors' access to alcohol, however, plaintiffs also argue that Oakland can address the desires of minors in less restrictive ways than the billboard ban. In particular, they suggest one-on-one intervention sessions to help youth understand alcohol dependence, marketing the social norm of abstinence, and mentoring focused on alcohol education. In other words, counterspeech. Oakland responds in two ways: first, that it does engage in counterspeech, and, second, that the additional counterspeech suggested by plaintiffs is either unrealistic, or bound to be ineffective.

Oakland sponsors many programs for educating youth about alcohol. These programs include, among others, Office of Parks and Recreation life-enrichment classes and drug-free sports leagues, grants to Oakland nonprofits such as the Boys and Girls Club and Just Say No! International that run alcohol-education programs, Head Start health education classes for teen parents, anti-substance abuse efforts with the Golden Sate Warriors and the Summit Medical Center, and a Police Activities League that mentors "at risk" youth. Again, Oakland believes, and has produced evidence, that such programs complement, rather than replace, the effect of the ordinance.

In denying Oakland's first motion for summary judgment, Judge Smith noted that the evidence thus far submitted did not show whether Oakland's enforcement efforts were unsuccessful or were somehow inadequate as an alternative to the Ordinance. That concern now has been adequately addressed by Oakland. Evidence shows that minors do not always, or even usually,

obtain alcohol by buying it in outlets. An enforcement program at the point of purchase, even if it is successful, cannot constitute an adequate substitute for the ordinance, which targets the psychological incentives for youth to drink.

Finally, plaintiffs challenge the ordinance's prohibition on billboards within 1000 feet of schools, city-owned youth-recreation centers, licensed child-care facilities, places of worship, or Raimondi Field. According to plaintiffs, 1000 feet is arbitrary and excessive. The First Circuit rejected the same argument, reasoning that such a determination "is generally better suited for legislative and executive decision makers than for courts." *Consolidated Cigar,* 218 F.3d at 50. "In the end," concluded the court, "one thousand feet—a mere three city blocks—does not strike us as an unreasonable distance in which to assume that minors present at or on their way to or form schools and playgrounds would be most affected by outdoor advertising." *Ibid.* This Court agrees that 1000 feet is a reasonable fit.

Oakland is not required to recognize and pursue every alternative to the ordinance. It has produced evidence of a broad campaign against underage drinking. The different facets of that campaign do not, in Oakland's judgment, replace the ordinance, but complement it. The Court finds this view well-founded given the evidence in the record. The ordinance is not a blanket ban on speech about alcoholic beverages; plenty of fora remain open for such speech. The ordinance is a reasonable fit to the goal of decreasing youth demand for alcoholic beverages.

CONCLUSION

Oakland has carried, its burden of showing that the ordinance materially advances the goal of stemming underage drinking and that it is narrowly tailored to achieve that goal. Plaintiffs' motion for summary judgment and a permanent injunction is DENIED. Defendant's motion for summary judgment is GRANTED. The Clerk shall close the file.

IT IS SO ORDERED.

Dated: December 7, 2000

WILLIAM ALSUP
United States District Judge